U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 11063773

Date: NOV. 24, 2020

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a ballet dancer and teacher, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. We dismissed the Petitioner's appeal from that decision. The matter is now before us on a combined motion to reopen and reconsider.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon review, we will dismiss the combined motion.

I. MOTION REQUIREMENTS

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Under the above regulations, a motion to reopen is based on documentary evidence of *new facts*, and a motion to reconsider is based on an *incorrect application of law or policy*. We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the Petitioner has shown "proper cause" for that action. Thus, to merit reopening or reconsideration, a petitioner must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show

proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

By regulation, the scope of a motion is limited to "the prior decision." 8 C.F.R. § 103.5(a)(1)(i). Therefore, the filing before us is not a motion to reopen and reconsider the denial of the petition. Instead, the filing is a motion to reopen and reconsider our most recent decision. Therefore, we cannot consider new objections to the earlier denial, and the Petitioner cannot use the present filing to make new allegations of error at prior stages of the proceeding.

II. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens with extraordinary ability if:

> (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
>
> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); see also *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

III. ANALYSIS

The Petitioner's career in Europe encompassed work as a dancer, choreographer, producer, and teacher. He later entered the United States as an O-1 nonimmigrant, where he has taught at various dance schools.

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner claims to have met six criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (iii), Published material about the alien in professional or major media;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vii), Display at artistic exhibitions or showcases; and
- (viii), Leading or critical role for distinguished organizations or establishments.

In our appellate decision, we concluded that the Petitioner met two of the evidentiary criteria, numbered (iv) and (vii). On motion, the Petitioner asserts that he also meets the evidentiary criteria numbered (i) and (viii). The Petitioner does not contend that we erred in our conclusions regarding the other previously claimed criteria.

After reviewing the Petitioner's motion, we conclude that the Petitioner has not shown that he satisfies the requirements of at least three criteria, for the reasons discussed below.

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i)

The Petitioner claims to have received two qualifying awards. In our dismissal notice, we concluded that the Petitioner had not established national or international recognition for either award.

In our appellate decision, we noted that the Petitioner had submitted a photograph of "what appears to be a poster or flier advertising the [redacted]' award ceremony," which listed several names, including that of the Petitioner. We noted that, without an English translation, "it is not clear whether those listed were award winners, the scheduled performers at the award ceremony, or both." On motion, the Petitioner submits a new English translation of the flier, which does clarify the issue. The translated flier lists the Petitioner as one of several entertainers who "will brighten the evening" by performing at the award ceremony. Therefore, the flier and its translation are not documentation of the Petitioner's receipt of the award.

The Petitioner notes that the flier refers to the [redacted] Award as an "International Award" ("*Premio Internazionale*"). The awarding entity's own use of this term is not evidence of the prize's recognition outside of the awarding organization itself.

The Petitioner had previously submitted supporting letters from the president of the cultural club that organized the [redacted] Awards from 1984 to 1992 and from an Italian television personality who was one of the presenters at the award ceremony. In our appellate decision, we acknowledged these letters, but stated: "If the award is or was in fact considered one of the most important awards that can be earned by artists and entertainers in Italy as [claimed], it is reasonable to expect independent evidence regarding the award and the national recognition associated with it." Because the Petitioner did not submit any such independent evidence, we concluded that the Petitioner had not established that the [redacted] Award is nationally or internationally recognized.

On motion, the Petitioner submits new letters from the same two individuals. Because both people were closely involved with the [redacted] Awards, their letters are not direct evidence of recognition of the awards outside of the presenting organization itself. The Petitioner cites no independent corroboration of the claims in the letters. Furthermore, letters written nearly 30 years after the fact do not suffice to show that the [redacted] Awards attracted significant attention or recognition in 1991.

The other award under consideration is [redacted] which the Petitioner received in 2007. After reviewing the record, we determined: "The submitted evidence reflects that the [redacted] award is intended to recognize natives of [redacted] or the [redacted] region who have gone on to achieve prominence in their respective fields," thus greatly limiting the award's scope and contradicting the Petitioner's earlier claim that "there are *no . . . limitations* placed on competitors." The Petitioner does not directly address or rebut this determination.

On motion, the Petitioner submits a letter from a photographer who received a [redacted] Award at the same time as the Petitioner. This individual states that the award ceremony was "an extraordinary gala evening," during which "other very famous people" also received the award. An award recipient's opinion of the award does not establish national or international recognition of that award.

The Petitioner contends that the award receives significant media coverage, but he does not show, on motion, that this coverage extends beyond [redacted] Italy. A previously submitted article about the awards is from a local [redacted] publication; a second article is from an unidentified source, as we noted previously.

The Petitioner has not introduced material new facts that would change our conclusions regarding the claimed awards, and he has not shown that we erred in our appellate decision with respect to those awards.

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii)

The Petitioner previously claimed leading or critical roles for various organizations and events. On motion, the Petitioner focuses on two organizations: the *Associazione Generale Italiana dello Spettacolo* (AGIS) (a trade union for entertainers), and the [redacted] (a theatrical group and school).

We determined that the Petitioner did not establish that his role with AGIS was leading or critical. The initial evidence indicated that the Petitioner had served as "coordinator of the dance division of AGIS of [redacted]' indicating that the Petitioner's position was at a regional subdivision. This evidence did not establish that the Petitioner's regional position was leading or critical for AGIS as a whole, or that the [redacted] regional subdivision has a distinguished reputation in its own right.

On motion, the Petitioner submits two new letters. A choreographer who preceded the Petitioner as a regional coordinator describes the Petitioner's election to the post and some of the initiatives that the Petitioner undertook in that position. The letter does not specify whether AGIS implemented the Petitioner's work beyond the regional level, and the Petitioner does not submit national-level documentation that might have clarified the point.

The secretary of the same regional office asserts that "thanks to the . . . initiatives undertaken by [the Petitioner] in the function of [his] mandate as Coordinator, the sector has seen an increase in the number of members and achieve[d] important objectives for the whole of AGIS." The official does not elaborate, and the motion does not include evidence from AGIS beyond the regional level.

On motion, a director and choreographer who worked at [redacted] attests to the Petitioner's leading role as the organization's founder and president, and that [redacted] "was the top Italian [redacted] school of its time," but the statements of an employee do not suffice to establish [redacted]s reputation.

The Petitioner asserts, on motion, that [redacted]'s "reputation . . . is evidenced by the long list of productions the company has put on," as well as the caliber of artists whom it employed. A "long list of productions" attests to the company's viability but does not necessarily indicate a distinguished reputation. The claimed reputations of past employees is, at best, an indirect reflection on [redacted]'s own reputation.

The Petitioner states that he "previously submitted various website and newspaper articles attesting to [redacted]'s success in the industry. Their productions were revered world-wide as the articles talk about the popularity of the shows and its reception from the people." Most of the articles in question are preview pieces for then-upcoming [redacted] productions in [redacted]. Such previews appear to amount to routine promotion of local performances, rather than a privilege inherently reserved for distinguished theatrical organizations. (One of the submitted items appears to be incomplete, comprising only a headline and one sentence; it is not clear whether the piece derives from a preview of an upcoming performance or a review of a performance that had already taken place.) The Petitioner does not explain how these four articles about performances in [redacted] Italy demonstrate "world-wide" recognition for [redacted] or establish that [redacted] has a distinguished reputation compared to other theater companies.

The Petitioner has not introduced material new facts that would change our conclusions regarding his role at AGIS, and he has not shown that we erred in our appellate decision with respect to his roles at AGIS or at [redacted]

The remainder of the Petitioner's brief on motion concerns the claim that the Petitioner has achieved sustained national or international acclaim. The issue of such acclaim is relevant in the context of the final merits determination. Because the Petitioner has not shown that he meets at least three of the ten threshold criteria from 8 C.F.R. § 204.5(h)(3)(i)–(x), we need not proceed to a final merits determination that would address the larger issue of sustained acclaim.

IV. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause for reopening or reconsideration and has not overcome the grounds for dismissal of the appeal. The motion to reopen and motion to reconsider will be dismissed for the above stated reasons.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.